IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 39646 of 2002(T)

PETITIONER:

S.JOSEPH, S/O. SKARIA, THAYYIL HOUSE,
THENMALA VILLAGE AND POST, PATHANAPURAM TALUK,
KOLLAM DISTRICT

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT BUILDING, THIRUVANANTHAPURAM

2. THE SECRETARY, THENMALA GRAMA PANCHAYATH, THENMALA POST, PATHANAPURAM TALUK, KOLLAM DISTRICT

3. THE PROJECT OFFICER, DISTRICT RURAL AND DEVELOPMENT AUTHORITY, KOLLAM

4. THE ASST. ENGINEER, BLOCK DEVELOPMENT OFFICE, ANCHAKL, ANCHAL POST, PATHANAPURAM TALUK, KOLLAM DISTRICT

5. THE BLOCK DEVELOPMENT OFFICER, ANCHAL N.E.S. BLOCK,ANCHAL POST, PATHANPURAM TALUK, KOLLAM DISTRICT

6. THE DISTRICT COLLECTOR, KOLLAM

7. THE TAHSILDAR, PATHANAPURAM

8. THE VILLAGE OFFICER, THENMALA

9. THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE DEPARTMENT, KOLLAM

10. THE THENMALA GRAMA PANCHAYATH COMMITTEE REPRESENTED BY THE PRESIDENT, THENMALA GRAMA PANCHAYATH, THENMALA POST, PATHANAPURAM TALUK, KOLLAM DISTRICT

R1, R4 TO R9 BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON 66509 OF 2002 AND 3270 OF 2003 BOTH IN OP 39646 OF 2002

DISMISSED

22.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF NOTICE DATED 20.7.2000 OF RESPONDENT NO. 7 COMMUNICATED TO THE PETITIONER.

EXT.P2 TRUE COPY OF LETTER DATED 30.1.1997 OF THE FIRST RESPONDENT COMMUNICATED TO THE PETITIONER.

EXT.P3 TRUE COPY OF PETITIONER'S REPRESENTATION DATED 17.2.2001 FORWARDED TO SIXTH RESPONDENT.

EXT.P4 TRUE COPY OF SNOTICE DATED 8.8.2001 OF SEVENTH RESPONDENT COMMUNICATED TO THE PETITIONER.

EXT.P5 TRUE COPY OF PETITIONER'S REPRESENTATION DATED 27.8.2001 FORWARDED TO THE HON'BLE MINISTER FOR REVENUE.

EXT.P6 TRUE COPY OF THE SUMMONS DATED 1.1.2003 ISSUED TO THE PETITIONER IN CONNECTION WITH C.C.NO. 35 OF 2002 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE'S COURT, TRIVANDRUM.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 39646 OF 2002

Dated this the 22nd day of November, 2007

JUDGMENT

O.P. is filed challenging Exts.P1 and P4 recovery proceedings whereunder the petitioner was called upon to pay an amount of above Rs. 2.21 lakhs in 2000 and above Rs. 4 lakhs in August, 2001. Petitioner, as convenor of a Panchayat Sub Committee was released an amount of around Rs. 1.2 lakhs for execution of three items of work, namely, a road construction, a culvert construction and construction of class rooms and a well for a School. Even though petitioner has claimed that he has done part of the work and the fourth respondent did not value the same, Government Pleader submitted that on enquiry by the Vigilance Cell of the Police, it was found that no work was done and the entire amount was misappropriated. Accordingly C.C.No.35 of 2002 is filed against the petitioner and the same is pending before the Enquiry Commissioner (Special Judge), Trivandrum. Government Pleader referred to the report of the Investigating Officer, who found that no work was done by the petitioner. Even though Vigilance case is

pending, it is upto the respondents to proceed for recovery of the amount from the petitioner with interest, if petitioner has not in fact executed the work. However, since no valuation report is produced in court either by the petitioner or by the respondents, O.P. is disposed of directing the fourth respondent to prepare a valuation report after conducting inspection along with the present Panchayat President and Panchayat Secretary and in the presence of the petitioner. Petitioner will point out the work executed by him and the fourth respondent will prepare a detailed statement and valuation of the work if any executed. If no work is executed, the entire demand could be recovered with interest. However, if petitioner has done any appreciable work, the same should be excluded and recovery should be limited to the balance amount with interest. Fourth respondent is directed to complete the valuation within one month from the date of production of a copy of this judgment by the petitioner. Interim orders granted by this Court against recovery will continue for another three months and thereafter recovery will be based on fresh proceedings to be issued by the fourth respondent.

Since the incident occurred in 1989-90 I direct the Enquiry Commissioner (Special Judge), Trivandrum to dispose of CC No. 35 of 2002 on a priority basis within a period of six months from today.

Registry will forward a copy of this judgment to the Judge concerned for compliance.

(C.N. RAMACHANDRAN NAIR)
Judge